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APPENDIX

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ARIZONA

JURISDICTIONAL STATEMENT FILED
DECEMBER 8, 1972

PROBABLE JURISDICTION NOTED
March 19, 1973

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

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v.

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF ARIZONA

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Aug. 5, 1971 – Plaintiffs Memorial Hospital and Henry Evaro complaint for collection of hospital bill and writ filed in Superior Court, Maricopa County, Arizona.

Aug. 30, 1971 – Defendants Board of Supervisors, et al., answer filed.

Nov. 23, 1971 – Memorandum of Decision and Order of Superior Court.

Dec. 2, 1971 – Judgment of Superior Court entered.

Jan. 14, 1972 – Petitioners Maricopa County and Henry Haws, B. W. Burns and J. Robert Stark, as members of the Maricopa County Board of Supervisors, petition for special action filed in the Supreme Court of Arizona.

Jan. 14, 1972 – Order setting time for hearing on January 25, 1972 at 10:00 A.M. in Supreme Court hearing room.

Jan. 19, 1972 – Respondents Maricopa County, Arizona, Superior Court, the Honorable Donald F. Froeb, Judge thereof, Memorial Hospital and Henry Evaro, response to petition for special action and supporting memorandum filed.

Jan. 25, 1972 – Supreme Court's order accepting jurisdiction of the petition for special action entered.

June 30, 1972 – Opinion of the Supreme Court filed.

July 13, 1972 – Respondents' motion for rehearing filed in the Arizona Supreme Court.

July 24, 1972 – Petitioners' response to petition for rehearing filed.

July 28, 1972 – Respondents' supplemental memorandum to petition for rehearing filed.

Sept. 12, 1972 – Arizona Supreme Court denies petition for rehearing.

Oct. 12, 1972 – Respondents' notice of appeal, certificate of service and designation of record on appeal filed.

THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

(Title omitted in printing)

NO. C251236

COMPLAINT FOR COLLECTION OF HOSPITAL BILL AND FOR WRIT OF MANDAMUS

(Non-Classified - Civil)

Plaintiffs allege:

I

Plaintiff Memorial Hospital is a not for profit corporation organized in the State of Arizona and serving the public in Maricopa County, Arizona as a community hospital. Plaintiff Henry Evaro is a citizen of the United States and he has been a resident of Maricopa County, Arizona since the early part of June, 1971. Mr. Evaro is an indigent within the meaning of Arizona Revised Statutes § 11-297 and the applicable rules and regulations of the State Welfare Department.

II

The defendant Maricopa County is a political subdivision of the State of Arizona. The defendant Board of Supervisors is the governing body of Maricopa County which by state law is charged with the mandatory duty of providing necessary hospital and medical care to the indigent sick and injured within Maricopa County.

III

On July 8, 1971, the plaintiff Henry Evaro was suffering

from an acute attack of asthma and bronchial illness so that he was in need of hospital care. On that day Mr. Evaro was referred by his attending physician to Memorial Hospital and he was there hospitalized.

IV

Upon the admission of Mr. Evaro to Memorial Hospital it was determined that he was an indigent patient and Memorial Hospital promptly gave notice pursuant to A.R.S. § 11-297.01 to the proper agent of Maricopa County of the location and condition of the patient and of his availability for transfer to the County Hospital. Although requested to do so by Memorial Hospital, the defendant Maricopa County did not move the patient Mr. Evaro from Memorial Hospital within twelve hours after being notified or at all.

V

By reason of the refusal of the defendant County and defendant Board of Supervisors to move the plaintiff Henry Evaro from Memorial Hospital, Mr. Evaro was necessarily hospitalized at Memorial Hospital from July 8, 1971 until July 19, 1971. The reasonable cost of the hospital care and treatment received by Mr. Evaro at Memorial Hospital, as determined in accordance with A.R.S. § 11-297.01 was in the sum of $1,202.60.

VI

The plaintiffs have made timely claim upon the defendant County and defendant County Board of Supervisors through their appropriate agents for payment of the cost of hospital care and treatment in the sum of $1,202.60. Those defendants have refused and they continue to refuse to reimburse the plaintiff Memorial Hospital for these costs for the sole

reason that Henry Evaro did not meet the one year residency requirement of A.R.S. § 11-297.

VII

Because of his ill health the plaintiff Henry Evaro after his discharge from Memorial Hospital on July 19, 1971, has required, and will continue to require, hospital and medical care and treatment. Upon information and belief it is alleged that the defendant County and defendant Board of Supervisors will, unless otherwise ordered by the court, continue to refuse to provide county care upon the grounds that Mr. Evaro fails to meet the one-year residency requirement, notwithstanding that he is an indigent who is otherwise entitled to county care.

VIII

The provisions of Title 11, A.R.S. § 11-297 requiring a residency of twelve months in the county as a condition precedent for hospital and medical care is unconstitutional as violative of the privileges and immunities clause and the equal protection clause of the Fourteenth Amendment of the United States Constitution. The refusal by the defendant County and defendant Board to provide county care to the plaintiff Mr. Evaro and reimburse the plaintiff hospital for its cost of providing care is unlawful and is a breach of the duties imposed by law on them.

IX

The plaintiff Henry Evaro has no other plain, adequate and speedy remedy at law or otherwise and unless the relief requested in this action is granted by the court, further irreparable harm will be suffered by Henry Evaro.

IN ACCORDANCE WITH THE FOREGOING, the

plaintiffs respectfully ask for judgment and relief as follows:

1. That an alternative writ of mandamus be issued out of this court compelling and commanding the defendants Maricopa County and Board of Supervisors to accept the plaintiff Henry Evaro as a patient at the Maricopa County Hospital and to provide him with necessary medical care as required on an inpatient or outpatient basis or to show cause before this court, at a time and place to be set by the court, why they have not done so.

2. That upon consideration of the issues herein a preemptory writ of mandamus be issued.

3. That this court adjudge and declare that the requirement in Title 11, A.R.S. § 11-297 providing that a person must be a resident of a county for the preceding twelve months in order to receive indigent medical care is unconstitutional.

4. That the plaintiff Memorial Hospital have judgment against the defendant County and defendant Board of Supervisors in the sum of $1,202.60, together with interest thereon at the rate of six percent (6%) per annum from July 19, 1971 until paid.

5. For such other and further relief as may be just and proper.

LEWIS & ROCA

By WALTER CHEIFETZ
Walter Cheifetz
Attorneys for Plaintiffs

[Verification omitted in printing]

(Title omitted in printing)

ANSWER

For their answer, Defendants admit, deny and allege as follows:

I

Defendants admit each and every allegation contained in Paragraphs I, II, III, IV, V, VI, VII and IX of Plaintiff's Complaint.

II

Defendants deny each and every allegation contained in Paragraph VIII of Plaintiff's Complaint.

III

Defendants affirmatively allege that A.R.S. Section 11-297 prohibits Defendants from furnishing medical care to the Plaintiff, Henry Evaro, unless he has resided within Maricopa County for a period of twelve months. Defendants further allege that A.R.S. Section 11-297 is in full force and effect and constitutes a valid exercise of legislative power of the State of Arizona.

IV

Plaintiff, Henry Evaro, has not been a resident of Maricopa County for a period of twelve months.

V

That the medical treatment furnished Plaintiff Evaro by Plaintiff Memorial Hospital and the medical treatment that Plaintiff Evaro will continue to need are not necessary for the preservation of life or limb.

WHEREFORE, Defendants having fully answered, pray the Plaintiffs' Complaint be dismissed.

MOISE BERGER
MARICOPA COUNTY ATTORNEY

By: /s/ William Carter
William Carter
Deputy County Attorney

[Verification and Certificate of Service omitted in printing]

(Title omitted in printing)

STIPULATION

Plaintiffs MEMORIAL HOSPITAL and HENRY EVARO and Defendants MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and BOB STARK, as the Maricopa County Board of Supervisors, by their attorneys undersigned hereby stipulate as follows:

Plaintiff Henry Evaro requires continued medical care for the preservation of his health and well being, but his medical condition does not constitute an emergency case when immediate hospitalization or medical care is necessary for the preservation of life or limb as required by the terms of A.R.S. 11-297.

Plaintiff Henry Evaro has not been a resident of Maricopa County for twelve months preceding the filing of this action.

LEWIS & ROCA

By: /s/ Walter Cheifetz
Walter Cheifetz
Attorney for the Plaintiff

MOISE BERGER
MARICOPA COUNTY ATTORNEY

By: _____
Deputy County Attorney
Attorney for Defendant

* * *

AGREED FACTS *

The material facts are as follows:

1. Henry Evaro is an indigent who recently changed his residence from New Mexico to Arizona and who has resided in the state of Arizona for less than twelve months.

2. Henry Evaro suffers from acute asthma and bronchial illness.

3. On July 8, 1971, Henry Evaro experienced severe aggravation of his chronic illness and sought relief from a neighborhood physician, Dr. Ortiz. Dr. Ortiz recommended hospitalization for his patient, although emergency treatment was not indicated.

4. At 7:30 p.m., on July 8, 1971, Henry Evaro entered Memorial Hospital in Phoenix, Arizona.

5. Even though proper notice was given to the appropriate agents of Maricopa County that Memorial Hospital wished to transfer Henry Evaro to the County Hospital, the county did not respond within the statutory twelve hour period or at all. In consequence of the hospitalization of Henry Evaro, Memorial Hospital provided hospital care and services totaling $1202.60. Although Memorial Hospital made timely claim upon Maricopa County through its appropriate agents for reimbursement of this sum, Maricopa County refused

* The facts here were set forth by appellants in the Superior Court and were agreed to and accepted by appellees in their Memorandum filed October 28, 1971.

and continues to refuse to reimburse Memorial Hospital for these costs of medical care and hospital services rendered in the treatment of Henry Evaro.

6. The sole reason for the refusal on the part of the county to admit Henry Evaro to the County Hospital, and the sole reason that the County refused and continues to refuse to reimburse Memorial Hospital for the reasonable value of its services rendered to Henry Evaro, is that he was not a resident of Maricopa County for the next preceding twelve month period as required by A.R.S. § 11-297.

* * *

EXHIBIT A

[Exhibit A to Appellees' Memorandum of Law in the Superior Court]

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Barbara Beaty, being duly sworn, deposes and says:

1. That she is the Controller of the Maricopa County Department of Health Services and as such officer is responsible for estimating the costs to the public of the services performed by Maricopa County General Hospital.

2. That she is familiar with the operating expenses of said hospital and the amount of revenue needed to finance necessary expansion thereof.

3. That the following is her estimate of the cost to Maricopa County of providing medical services to indigent residents of Maricopa County who have not resided within the County for a period of twelve months and who do not require emergency medical care for the preservation of life or limb.

ESTIMATED COST TO MARICOPA COUNTY IF RESIDENCY REQUIREMENT IS ABOLISHED

The data presented below are *estimates* due to the impossibility of determing [sic] the patient volume increases that will occur with the abolishment of the *residency requirement.* The cost figures are purposely conservative because of the intangibleness of the data. The format used is as follows:

1. Hospital Inpatients

2. Hospital Outpatients - Clinic

3. Nursing Home Patients

4. Summary

1. Hospital Inpatients

a.	Number of Patient Days for March, 1971 - August, 1971 (6 months of operation in the Roosevelt Facility)	75,589
b.	Estimate for a 12 month period	155,000
c.	Estimated number of inpatient days if residency requirement is abolished	175,000
d.	Cost per Patient Day	$75.00
e.	Estimated cost increase to Maricopa County if residency requirement is abolished	$1,500,000.00

EXPLANATION: The current Patient Day estimate is arrived at by multiplying the figure for 6 months by 2 and taking into consideration that the census for the first few months in the new facility was lower than the lst few months because of start-up time reductions in the census. The estimate of 175,000 Patient Days, assuming the residency requirement is abolished, is based on the following:

(1) Normally, 100 percent occupancy is not attainable because a hospital must maintain some empty beds for emergencies.

(2) Patients requiring isolation create empty beds because other patients cannot be placed in the same room with isolation patients.

(3) Any time more than one bed is placed in a room, vacant beds will result because patients of different sexes cannot be placed in the same room.

(4) Surgery and nonsurgery patients cannot be mixed because of possible medical complications.

(5) Specialty units which are needed for care of certain types of patients can sometimes result in temporary non-use of beds.

These facts were brought to light in discussions with Admitting and Eligibility, Nursing and Administrative personnel at the hospital. In reviewing information with the above personnel, it was thought that a minimum occupancy figure of around 85 percent would be realistic at the present time, and this would amount to around 175,000 Patient Days per year. The cost figure of $75.00 is $5.00 less than that reported on the Medicare Report ending February 28, 1971. The reasoning behind this is that the marginal cost of an additional patient is less than the average cost (fixed or semi-variable costs being spread over more patients); thus, as a higher utilization point is reached, the average cost becomes lower.

2. Hospital Outpatients - Clinic

a.	Number of clinic visits for March, 1971 - August, 1971 (6 months of operation in the Roosevelt Facility)	47,252
b.	Estimate for a 12 month period	95,000
c.	Estimated number of clinic visits if residency requirement is abolished	112,500
d.	Cost per clinic visit	$20.00
e.	Estimated cost increase to Maricopa County if residency requirement is abolished	$350,000.00

EXPLANATION: The current clinic visit estimate of 95,000 is arrived at by multiplying the figure for 6 months by 2 and is slightly under 95,000. A minimum estimate of 112,500 clinic visits if the residency requirement is abolished, is based upon the following:

(1) Limited supply of physicians available to treat patients.

(2) Number of patients that can properly be seen in a given time period. (Given 30 exam rooms, it is

felt that one physician can see 5 patients in 1 hour using 2 exam rooms for 6 hours per day for 250 days per year (holidays and weekends are excluded.) If physicians' services could be obtained and the clinic hours increased, more patients could be seen but at a higher cost than $20.00 per visit because of differentials needed to hire personnel to work later shifts.) The figure of $20.00 per clinic visit is the cost per visit as reported on the Medicare year-end statement of reimbursable costs for the period ending February 28, 1971.

The figures given on the minimum estimated workload were determined via computations from the figures shown above which were gathered in discussion with personnel from the clinic, Administration, Admitting and Eligibility.

3. Nursing Home Patients

a.	Estimated increase in Patient-Day load if residency requirement is abolished for a 12 month period	76,500
b.	90 percent of the Patient Days will be skilled care Patient Days	68,850
c.	The gross cost per Patient Day for skilled patients is currently	$12.60
d.	Total gross cost for skilled nursing home patients is estimated at	$867,500
e.	10 percent of the Patient Days will be sheltered care Patient Days	7,650
f.	The gross cost per Patient Day for sheltered patients is estimated to be	$9.00
g.	Total gross cost for sheltered nursing home patients is estimated at about	$69,000

h. Maricopa County General Hospital supplies medical supplies and services as well as drugs to outpatients in nursing homes, and it is estimated that it runs $2.50 per Patient Day.

i. Cost of drugs and medical supplies and services $191,000

j. State welfare and Social Security money will continue to pay 50 percent of the room and board charges on skilled and sheltered care.

k. Estimated cost increase to Maricopa County if residency requirement is abolished:

Skilled Care	$867,500
Sheltered Care	69,000
Subtotal	936,500
Social Security and State Welfare vendor pay	468,250
subtotal	468,250
Plus Medical Supplies and services and drugs	191,000
TOTAL	$659,250

EXPLANATION: The Patient-Day estimate was arrived at through discussions with our personnel in charge of nursing home placement, eligibility and other hospital administrative personnel, representatives of State Health Department, Maricopa County Vital Statistics, Health Planning Council, Arizona Health Planning Authority and Arizona Economic Planning and Development. It is determined as follows:

(1) Each month for the first three months 50 patients will go to nursing homes

(2) Each month for the next nine months, 20 patients will go to nursing homes. This increase is anticipated with the abolishment of the residency requirement. The cost figures of $12.60 and $9.00 per Patient Day is what we are currently paying and expect to pay for skilled and sheltered care respectively, based upon an analysis of nursing home costs. The $2.50 cost per day for medical supplies and services and drugs

on figures used by Federal hospitals
is based upon place their patients in nursing homes.
when they plac State Welfare and the individual pa-
Currently, State l Security are paying about 50 per-
tients' Social S gross costs for our nursing home pa-
cent of the gro re assuming that this will remain con-
tients; we are as increased load decreases the Welfare
stant. If the inc vendor pay) per patient, then the fi-
payments (venc act will be even greater than antici-
nancial impact
pated.

4. Summary

It must be emphasized ized that these figures are minimum
estimates and are based u d upon current facts available to us
and intelligent estimates tes from the hospital personnel and
outside authorities that aat are most closely associated with
the areas mentioned. It is t is impossible to accurately estimate
the impact that abolishme hment of the residency requirement
will have financially upor pon Maricopa County. Below is the
computation showing wh what we estimate the cost to be up-
on removal of the reside sidency requirement for the first 12
months.

Hospital Inpatients	$1,500,000.00
Hospital Outpatients - Cs - Clinic	350,000.00
Nursing Home Patients nts	659,250.00
TOTAL	$2,509,250.00

Further affiant says not. ot.

/s/ Barbara Beaty
Barbara Beaty

[Jurat omitted in printing] ng]

EXHIBIT B

[Exhibit B to Appellees' Memorandum of Law in the Superior Court]

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Stanford F. Farnsworth, M. D., being duly sworn, deposes and says:

1. That he is the Maricopa County Director of the Department of Health Services and as such officer is administratively responsible to the Maricopa County Board of Supervisors for the maintenance and operation of Maricopa County General Hospital.

2. That Maricopa County General Hospital is an institution owned by Maricopa County and operated by the Maricopa County Board of Supervisors for the purpose of discharging the Supervisors' statutory obligation to provide for the indigent sick of the County.

3. That he has caused to be prepared an estimate of the cost to Maricopa County of furnishing medical treatment to indigent residents of Maricopa County who have not resided within the County for a period of twelve months and who do not require emergency medical care for the preservation of life or limb.

4. That the estimated cost of furnishing medical care to the persons described in Paragraph 3 above is $2,500,000 per year.

5. That the total operating budget of Maricopa County General Hospital for the FY 1971-72 is $18,805,446.

6. That it is his belief, if Defendants are obligated to provide medical care to the persons described in Paragraph 3 of this Affidavit, it will be necessary for them to increase the sums spent to maintain and operate the Maricopa County General Hospital by approximately 13.3%.

Further affiant says not.

/s/ Stanford F. Farnsworth
Stanford F. Farnsworth, M.D.

[Jurat omitted in printing]

EXHIBIT C

[Exhibit C to Appellees' Memorandum of Law in the Superior Court]

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Charles W. Miller, being duly sworn, deposes and says:

1. That he is the County Manager for the Defendant, Maricopa County, and as such officer is responsible to the Maricopa County Board of Supervisors for the preparation of the annual budget of said County and the computation of the rate of taxation necessary to raise the sums necessary to meet said budget.

2. That he is informed and believes that the cost to Maricopa County of providing medical care to indigent residents of the County who have not resided within the County for a period of twelve months and do not require emergency medical care for the preservation of life or limb, would be approximately $2,500,000.

3. That Maricopa County can raise the sum stated in Paragraph 2 above only by ad valorem taxation of real and personal property in said County.

4. That at the present assessed valuation of property in Maricopa County, to raise the sum stated in Paragraph 2 above, would require an ad valorem property tax rate of $.18 per hundred dollars of assessed valuation.

5. That the present general tax rate of Defendant, Maricopa County, is $2.13 per hundred dollars of assessed valuation. In order to raise the sums required to

furnish medical care to the persons described in Paragraph 2 of this Affidavit, it will be necessary for the County to raise the general County tax rate to $2.31 per hundred dollars of assessed valuation, an increase of 8.45%.

6. That the total budget for Maricopa County for the fiscal year beginning July 1, 1971, is $76,460,364. An increase of $2,500,000 would require said County to increase its budgeted expenditures by approximately 3.27% per annum.

Further affiant says not.

/s/ Charles W. Miller
Charles W. Miller

[Jurat omitted in printing]

(Title omitted in printing)

MEMORANDUM OF DECISION
AND ORDER

This cause was presented to the court upon agreed facts and memorandum of law.

The sole question in the case is whether Section 11-297, Arizona Revised Statutes, is unconstitutional insofar as it requires in non-emergency cases that an indigent person be a resident of the county for the preceding twelve months before he can receive hospitalization or medical care at county expense.

The issue in this case is determined by the holding of the United States Supreme Court in *Shapiro v. Thompson*, 394 U.S. 618 (1969). The application of that case to the one-year residency requirement of the statute in question discloses that this statutory provision is violative of the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. See also, *Vaughn v. Bower*, 400 U.S. 884, aff'g memo. 313 F. Supp. 37 (D.C. Ariz. 1970) and *Valenciano v. Bateman*, 323 F.Supp 600 (D.C. Ariz. 1971). cf. *Board of Supervisors, Pima County v. Robinson*, 10 Ariz. App. 238, 457 P.2d 951, *vacated as moot*, 105 Ariz. 280, 463 P.2d 563.

The one-year residency requirement is severable from the general statutory provisions for medical care to the indigent sick.

Therefore, in accordance with the foregoing,

IT IS ORDERED declaring that the words "for the preceding twelve months" in Section 11-297, A.R.S., render the statute unconstitutional and are therefore void.

IT IS FURTHER ORDERED that plaintiffs recover against defendants the sum of ONE THOUSAND TWO HUNDRED AND TWO AND 60/100 DOLLARS ($1,202.60), together with costs.

IT IS FURTHER ORDERED that the defendants accept plaintiff as a patient at the Maricopa County Hospital and to provide him with necessary medical care.

DATED this 23rd day of November, 1971.

/s/ DONALD F. FROEB
JUDGE

[Certificate of service
omitted in printing]

THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

MEMORIAL HOSPITAL and HENRY EVARO, Plaintiffs, vs. BOARD OF SUPERVISORS, MARICOPA COUNTY, ARIZONA; and MARICOPA COUNTY, ARIZONA; Defendants.	NO. C 251236 JUDGMENT (Assigned to the Honorable Donald F. Froeb - Div. 16)

(FILED: December 2, 1971)

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That the words "for the preceding twelve months" contained in A.R.S. § 11-297 constitute an unconstitutional requirement and are therefore void.

2. That the one-year residency requirement contained in A.R.S. § 11-297 is severable from the general statutory provisions for medical care to the indigent.

3. That the defendants accept the plaintiff Henry Evaro as a patient at the Maricopa County Hospital and provide him with necessary medical care and that a peremptory writ of mandamus to this effect may be issued by the clerk of the court.

4. That the plaintiff Memorial Hospital is hereby awarded judgment against the defendants in the sum of One Thousand Two Hundred and Two and 60/100 Dollars ($1,202.60), together with costs.

DONE IN OPEN COURT this 1st day of ~~November~~ December, 1971.

/s/ Donald F. Froeb
Judge of the Superior Court

APPROVED AS TO FORM:
MOISE BERGER
MARICOPA COUNTY ATTORNEY

By /s/ John R. Sticht
Deputy County Attorney
ATTORNEYS FOR DEFENDANTS

LEWIS & ROCA

By /s/ Walter Cheifetz
Walter Cheifetz
ATTORNEYS FOR PLAINTIFFS

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors,	)	
Petitioners,	)	No. 10750
vs.	)	PETITION FOR SPECIAL ACTION
SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD F. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents.	)	

(FILED: January 14, 1972)

Petitioners, MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, for their Petition for Special Action, allege as follows:

I

The real parties in interest are MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, Respondents, and MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners.

II

Respondents, MEMORIAL HOSPITAL and HENRY EVARO, sued the Petitioners in the Superior Court of the

State of Arizona in Cause #C-251236 to compel the Petitioners to accept the Respondent, HENRY EVARO, as a patient at Maricopa County General Hospital, a hospital owned and operated by Petitioners for the relief of the indigent sick of the County and to compel the Petitioners to pay to the Respondent, MEMORIAL HOSPITAL, the sum of $1,202.60 for hospital care furnished Respondent, HENRY EVARO. The Parties agreed that HENRY EVARO was an indigent person who required continued medical care for the preservation of his health and well-being but his medical condition did not constitute an emergency case needing immediate hospital or medical care as required by the terms of A.R.S. 11-297. The Parties further stipulated that Respondent, HENRY EVARO, had not been a resident of Maricopa County for twelve months preceding the filing of the action in the Superior Court.

The Parties agreed in the pleadings and memorandum filed in the Superior Court that the sole question in the case was whether A.R.S. 11-297, prescribing a twelve months durational residence requirement for non-emergency medical services at county expense, violated the U. S. Constitution.

The HONORABLE DONALD F. FROEB, Judge of the Superior Court, ruled that words "for the preceding twelve months" contained in A.R.S. 11-297 violated the U. S. Constitution and were, therefore, void. Attached hereto as Exhibits A & B, respectively, are true and correct copies of the Memorandum of Decision and Judgment of the Superior Court.

III

The Respondent, SUPERIOR COURT OF THE STATE OF ARIZONA, has proceeded in excess of its jurisdiction and

legal authority in that it declared to be void a valid and subsisting statute of the State of Arizona. A.R.S. 11-297, prescribing a twelve months durational residence requirement for medical treatment at public expense is a valid exercise of the State's legislative power and does not conflict with the Constitution of the United States.

IV

Petitioner does not have a plan [sic], speedy and adequate remedy at law because Petitioner will be unable to recover from the Respondent's expenses of medical care furnished to Respondent, HENRY EVARO, in the future pursuant to judgment of the Court because Petitioner is informed and believes that Respondent, HENRY EVARO, is an indigent person without sufficient means to repay to Petitioners the cost of his medical care if this Court should determine that the decision of the Superior Court was erroneous.

The Supreme Court has discretionary power to issue a writ of certiorari in a case where a Petitioner has the right of appeal when, in the judgment of the Supreme Court, the right of appeal is neither speedy nor adequate.

V

Petitioners respectfully submit that this is a suitable case for the Supreme Court to exercise its discretion and accept the case for review on a special action because of the extreme public importance of the issue presented in the case. The Respondent, HENRY EVARO, is one of a large class of citizens whose rights to receive medical care at public expense have not been adjudicated by a court of last resort. The Petitioners and the Supervisors of the other thirteen counties in the State of Arizona need the guidance of the Court on this question of

law in preparing budgets for the coming fiscal year and discharging their legal responsibility to provide for the indigent sick of the county.

WHEREFORE, Petitioners respectfully request:

1. That the Court issue an immediate order staying all procedures in the Court below until this Court can hear the matter.
2. That the Court set a time and day on which Petitioners' application for special action can be heard.
3. That the Court after hearing enter an order vacating the judgment of the Superior Court.
4. That the Court declare A.R.S. 11-297, prescribing a twelve months durational residence requirement for a person seeking medical care at public expense, to be a valid exercise of the legislative power of the State of Arizona.

Respectfully submitted this 12 day of January, 19__

MOISE BERGER
MARICOPA COUNTY ATTORNEY

By: /s/ William Carter

William Carter
Deputy County Attorney
Attorneys for Petitioners
111 South Third Avenue
Phoenix, Arizona 85003

[Verification and Memorandum of Points and Authorities omitted in printing]

[Title omitted in printing]

RESPONSE TO PETITION FOR SPECIAL ACTION AND SUPPORTING MEMORANDUM

RESPONSE

For their response to the petition for special action, the respondents admit, deny and allege as follows:

I

They admit that this is a suitable case for the Supreme Court to exercise its discretion and accept the case for review on a special action for the reasons stated in the petition.

II

They admit the allegations of the petition except for the allegations contained in paragraph III. In this regard they deny that the respondent Superior Court of the State of Arizona has proceeded in excess of its jurisdiction or legal authority in declaring the residence requirement to be invalid.

III

They allege that that portion of A.R.S. § 11-297 which prescribes a 12 month durational residence requirement for medical treatment at public expense is contrary to the Consitution of the United States.

In accordance with the foregoing and the memorandum of points and authorities hereinafter set forth, the respondents respectfully ask that the judgment of the Superior Court be affirmed.

LEWIS & ROCA

By_____

Walter Cheifetz
Attorneys for Respondents

[Memorandum of Points and
Authorities omitted in printing]

SUP
STAT

SUPREME COURT
TATE OF ARIZONA
Jan Phoenix
Supreme 85007
Maricopa C January 26, 1972
[Title omitted in printing preme Court No. 10750
The following action opa County No. C-251236
the State of Arizona on nting]
above-entitled cause:

tion was taken by the Supreme Court of
"ORDERED: The Co a on January 25, 1972 in regard to the
Petitior

e Court accepts jurisdiction of the
tition for Special Action."

[Statement of mailing omitted in printing]

CLIFFORD H. WARD, Clerk
By /s/ Mary Ann Hopkins
Deputy Clerk

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners, v. SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD F. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents.	ORDER GRANTING SPECIAL ACTION PRAYER FOR RELIEF AND VACATING SUPERIOR COURT JUDGMENT

Special Action re: Maricopa County Superior Court Number C-251236

Moise E. Berger, Maricopa County Attorney
by William Carter, Deputy County Attorney
Attorneys for Petitioners

Lewis & Roca
by Walter Cheifetz Attorneys for Respondents

This cause having been heretofore submitted, and the Court having duly considered same, and being now advised in the premises, files its opinion. It is accordingly ORDERED that the Special Action Prayer for Relief is granted and the judgment of the Superior Court is vacated.

DONE IN OPEN COURT this 30th day of June, 1972.

[Certification omitted in printing]

IN THE
SUPREME COURT OF THE
STATE OF ARIZONA
In Banc

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners, v. SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD F. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents.	No. 10750 FILED: June 30, 1972

SPECIAL ACTION
PRAYER FOR RELIEF GRANTED
JUDGMENT VACATED

Moise Berger, Maricopa County Attorney — Phoenix
by William Carter, Deputy County Attorney
Attorneys for Petitioners

Lewis & Roca — Phoenix
by Walter Cheifetz
Attorneys for Respondents

HOLOHAN, Justice:

Petitioner, the Board of Supervisors of Maricopa County,

filed this petition for special action to seek a review of the order and judgment of the Superior Court compelling the Petitioner to accept the Respondent Evaro as a patient at the Maricopa County General Hospital. The Respondent Superior Court ruled that the residency requirement in A.R.S. § 11-297 was unconstitutional, and that all persons in the county who were indigent would be entitled to medical care at the county hospital irrespective of the length of residence within the county. Because of the importance of the issues involved and the need for a prompt resolution of the problem, the Petition was accepted for determination by this Court.

The parties have stipulated the essential facts. They have agreed that the Respondent Evaro was an indigent person who required continued medical care for the preservation of his health and well being, but his medical condition did not constitute an emergency case needing immediate hospital or medical care. The Respondent Evaro had not been a resident of Maricopa County for 12 months preceding the requirement for medical care or at the time of the filing of the action in the Superior Court. He was treated at Memorial Hospital, and the hospital joined with Evaro in the action in the Superior Court to compel the Board of Supervisors to accept the Respondent as a patient at the County General Hospital, and to pay the Respondent Memorial Hospital the sum of $1,202.60 for hospital care furnished Evaro up to the time of the filing in the Superior Court.

Substantially, the same facts as here presented were submitted to the Superior Court, and that court ruled in favor of the position of the Respondents holding that the residency requirement found in A.R.S. § 11-297 was unconstitutional and void and, therefore, the Petitioners were ordered to accept Evaro as a patient at the County General Hospital where his medical care was to be provided, and judgment was given against the Board of Supervisors and in favor of Memorial Hospital.

The sole question presented in this cause is whether the residency requirement of the Statute violates the Federal Constitution.

A.R.S. § 11-297 provides:

"A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief * * * without first filing * * * a statement * * * that he is an indigent * * * and that he has been a resident of the county for the preceding twelve months."

The principal case relied upon by Respondents is that of Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed. 2d 600 (1969). The Supreme Court of the United States declared a one year residency requirement of a state for eligibility for welfare to be unconstitutional. The U. S. Supreme Court held that such a residency requirement constituted an "invidious" classification which interfered with a fundamental right, the right to travel, and, in the absence of a compelling and substantial state interest, such residency requirement cannot stand.

While the *Shapiro* case dealt with eligibility for welfare funds which were described as necessary to life and well being, various federal courts have extended the ruling to apply to a host of situations. This has largely resulted because of the limitation placed by the Court on the *Shapiro* holding. See Footnote 21 on page 638 of 394 U.S., on page 1333 of 89 S.Ct. It would seem that the matter is left for a case by case determination. A decision by the California Court of Appeals sustaining that state's residency requirement for tuition free education, Kirk v. Board of Regents, 273 Cal.App.2d 430, 78 Cal.Rptr. 260 (1969), was left standing when the U. S. Supreme Court, without opinion, dismissed the appeal, 396 U.S. 554, 90 S.Ct. 754, 24 L.Ed.2d 747 (1970). A similar decision by a three-judge panel upholding the Minnesota residency requirement was affirmed by the U.S. Supreme Court without opinion. Starns v. Malkerson, 326 F.Supp. 234 (D. Minn., 1970), *aff'd* 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). Following these authorities and others, we recently sustained the residency requirement of this state classifying students at the State Universities, and approved as constitutional the requirement that students with less than the required residency pay a greater tuition than the resident students. Arizona Board of Regents v. Harper, 108 Ariz. 223, 495 P.2d 453 (1972).

Recently, the U.S. Supreme Court in Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), struck down the Tennessee one year residency for eligibility to vote as not furthering any compelling state interest and as being in violation of the equal protection clause of the Fourteenth Amendment. The Court found that the residence requirement in voting deprived citizens of two fundamental rights, the right to vote and the right to travel. In *Dunn*, as in *Shapiro*, the Court concludes that any classification which serves to penalize the exercise of a fundamental right, unless shown to be necessary to promote a compelling governmental interest is unconstitutional.

Following the *Shapiro* decision, the precise issue presented in this cause was decided by the Arizona Court of Appeals in Board of Supervisors v. Robinson, 10 Ariz.App. 238, 457 P.2d 951 (1969), vacated by us as moot, 105 Ariz. 280, 463 P.2d 536 (1970), and in a three-judge federal case Valenciano v. Bateman, 323 F.Supp. 600 (D.Ariz. 1971). In each instance the court held the classification was unconstitutional.

The county residency requirement for non-emergency medical treatment does not discriminate in favor of residents of Arizona versus recent arrivals. The requirement applies to all citizens within the state including long term residents of one county who move to another county. Thus, the classification does not single out non-residents nor attempt to penalize interstate travel. The requirement is uniformly applied. The district court in *Valenciano* was not impressed with this position, and their position was that there was no distinction between interstate and intrastate travel.

Whether the district court's rationale in *Valenciano* is sound or not is not terribly important. The main point is that the Legislature was not intent on interfering with interstate travel as was the fact in the *Shapiro* case. Nor does the matter in issue deal with such fundamental rights as speech or voting. Contrary to the Court of Appeals and the district court, we believe that this classification more properly falls within the permissible area of reasonable regulation as approved in Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). The U.S. Supreme Court held the Maryland maximum welfare grant regulation constitutional

although the grant placed an absolute limit on the amount to be paid a dependent family regardless of size and actual need. The Maryland statute and regulations, as in a number of states, fix a standard of need for an eligible family, and the standard of need is increased with each additional person or child in the household subject to a maximum limit of $250 per month irrespective of the number of children in the family needing the assistance. The classification was upheld on the "reasonable basis" test. As the Court said in *Dandridge*:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369, 377. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70, 33 S.Ct. 441, 443, 57 L.Ed. 730, 734. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' McGowan v. Maryland, 366 U.S. 420, 426, 81 S.Ct. 1101, 6 L.Ed.2d 393, 399." 397 U.S. at p. 485, 90 S.Ct. at 1161.

The Legislature has placed the sole and exclusive responsibility for hospitalization and medical care of the indigent sick on county government. A.R.S. § 11-291. No particular standard is set to guide the counties other than that they may include in their budgets and tax levy such amount as is deemed necessary and adequate for the purpose. A.R.S. § 11-292.

The wide differences in county resources among the counties result in different economic ability to meet the needs of the residents within the county who need medical care. Some reasonable basis of determining the demands to be made on such county facilities or resources must exist if the county is to be able to budget and tax to carry out its responsibilities. The Legislature has chosen to use a county residency base.

Our duty is not to decide whether that position is wise or whether it best fulfills the social need. Our duty is to determine whether it has rational basis "free from invidious discrimination." We believe that the statute is constitutional.

Petitioner argues also that there is a compelling interest of county government, especially Petitioner county, in the classification. Absent a residence requirement, any indigent sick person in the state could seek admission to Petitioner's hospital, the facilities being the newest and most modern in the state, and the resultant volume would cause long waiting periods or severe hardship on Petitioner county if it tried to tax its property owners to support the indigent sick of the state. The point, while perhaps overextended, raises a serious practical problem vital to the interests of the residents of Petitioner county. Should the development of modern and effective facilities be discouraged because such efforts attract an inordinately large group of users? How can a county plan to meet the future needs of its indigent sick unless there is some predictable factor? Certainly not a perfect answer but one which allows for some reasonable basis is that of resident population. Good county administrators plan ahead to meet the needs of their citizens. Collection of information on rising population figures and rate of growth is a continuing endeavor. Based on such data, county government can prepare budgets, plan for new facilities, secure financing, and generally do those things necessary to provide the service. Such efforts are not accomplished at a whim; time is essential, and so is a base from which to operate.

The Legislature may wish to change the present system of indigent medical care from county responsibility to state responsibility with the larger tax base, but it is not our function to decide the best means of accomplishing the solution to a particular social problem. This responsibility constitutionally rests with the Legislature.

We find the residency requirements of A.R.S. § 11-297 to be constitutional and a valid exercise of legislative power and, therefore, the judgment of the Superior Court in Cause No. C251236 is vacated.

Judgment vacated.

SUPREME COURT
STATE OF ARIZONA
Phoenix
85007
September 13, 1972
Supreme Court No. 10750
Maricopa County No. C 251236

[Title omitted in printing]

The following action was taken by the Supreme Court of the State of Arizona on September 12, 1972 in regard to the above-entitled cause:

"ORDERED: Petition for Rehearing = DENIED."

Certified copy of Order Granting Special Action Prayer for Relief and Vacating Superior Court Judgment issued this date.

CLIFFORD H. WARD, Clerk
By /s/ Mary Ann Hopkins
Deputy Clerk

[Statement of mailing omitted]

This Single Appendix is respectfully submitted by

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